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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 117

HUNTER A. GIBBES, REPRESENTING HIMSELF AND ALL OTHER DEPOSITORS OF THE CENTRAL UNION BANK OF SOUTH CAROLINA, ETC., APPELLANT,

vs.

SIMPSON J. ZIMMERMAN, INDIVIDUALLY AND AS CONSERVATOR OF THE CENTRAL UNION BANK OF SOUTH CAROLINA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

JOHN M. DANIEL,
J. IVEY HUMPHREY,
MELTON & BELSER,
Counsel for Appellees.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Motion to dismiss the appeal	6

Statutes Cited.

Act of the General Assembly of the State of South Carolina, approved March 9, 1933	2
Act of the General Assembly of the State of South Carolina entitled "An Act to provide for the liquidation of banks or banking institutions after a conservator has been appointed", approved by the governor of the State of South Carolina on May 10, 1933, Section 1	3
Section 2	3
Section 3	4
Section 4	4
Section 4 (a)	4
Section 5	4
Section 6	4

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 117

HUNTER A. GIBBES, Representing Himself and All Other Depositors of The Central Union Bank of South Carolina, etc., Appellant,

vs.

SIMPSON J. ZIMMERMAN, Individually and as Conservator of The Central Union Bank of South Carolina, et al.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

STATEMENT BY APPELLEES OF GROUNDS AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES HEREIN AND MOTION TO DISMISS THE APPEAL.

In accordance with the rules of this honorable Court the appellees above named hereby state and present to

the Court the following grounds against the jurisdiction of this Court in this matter and move to dismiss the appeal herein:

I.

Because, by virtue of the great emergency then existing, as disclosed by the Act of the General Assembly of the State of South Carolina, approved March 9, 1933, and as found by the Supreme Court of the State of South Carolina in the decision from which the appeal is sought, the said Act vesting the Governor of the State with plenary powers to supervise and control the banking department and banks of said State in accordance with the provisions of said Act was a reasonable and proper exercise of the police powers of the said State and for the public good.

II.

Because the said Act obviously and manifestly does not deprive the appellant of property or any contractual right or due process of law, but relates to the remedy by which his property and rights may be preserved and secured to him.

III.

Because by subsequent Act of the General Assembly of the State of South Carolina entitled "An Act to provide for the liquidation of banks or banking institutions after a conservator has been appointed," approved by the Governor of the State of South Carolina May 16, 1933, and now of force, it was further enacted as follows:

"An Act to Provide for the Liquidation of Banks or Banking Institutions After a Conservator Has Been Appointed.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina: When the Governor shall conclude, after advising and consulting with the Board of Bank Control, that any bank for which a Conservator has been or hereafter shall be appointed, is insolvent or in imminent danger of insolvency and it is necessary in order to protect the interest of depositors and creditors to liquidate such bank, he shall order the liquidation thereof; and when liquidation shall have been so ordered the same shall be under and by the Conservator appointed for such bank, and shall continue until the liquidation of said bank has been completed. And such Conservator shall be vested with the same powers and duties as receivers of banks under existing laws, except as in his discretion the Governor acting with the Board of Bank Control shall fix or limit the liquidating expenses of such bank or banking institution. The liquidation of all such banks shall be under such rules and regulations as may be prescribed by the Governor after consulting and advising with the Board of Bank Control, and the Conservator shall have the right to apply to a court of competent jurisdiction for direction and instruction on questions arising in the liquidation of any such bank.

SECTION 2. The depositors of any such bank in liquidation shall be authorized by the vote of a majority present at a meeting of such depositors called by such Conservator on order of the Governor after ten days' notice to each

depositor by mail, at his last known post office address, to select a committee of not exceeding three depositors to confer and advise with the Conservator and the Board of Bank Control, in the liquidation of said bank. It shall be the duty of the Conservator to call the depositors together for the purpose of electing said committee and he is hereby requested to call said meeting.

SECTION 3. That all appointments of Conservators heretofore made by the Governor by and with the advice of said Board of Bank Control shall be and hereby are ratified and confirmed.

SECTION 4. The term "banks" as used in this Act shall be construed to include cash depositories, building and loan associations and other institutions doing a banking business.

SECTION 4-A. That the terms hereof shall not be applicable to banks, at present, in liquidation under a receivership appointed by the order of Court and this Act shall not annul, invalidate or remove any Receiver engaged, at present, in the liquidation of any bank.

SECTION 5. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SECTION 6. This Act shall take effect immediately upon its approval by the Governor.

Approved the 16th day of May, 1933.

I. C. BLACKWOOD,
Governor."

That said Act is in *pari materia* with the Act of March 9, 1933, and the Acts should be construed to-

gether; and it being admitted that a conservator for the said The Central Union Bank of South Carolina has been appointed, and it being urged by the appellant as ground for this appeal that said bank is insolvent, it is manifest that the conservator thereof under the terms of the said Acts is or "shall be vested with the same powers and duties as receivers of banks under existing laws," and that the appellant, while his remedy as provided by previous laws has been changed, has not by the provisions of the said Act been deprived of his property or property rights, but the same will be protected and preserved by the method provided thereby for the rehabilitation or liquidation of the said bank.

IV.

Because the stockholders' liability, the benefit of which is claimed by the appellant, under the provisions of said Acts will be protected and preserved by the conservator, pursuant to the powers conferred upon him, as effectively as by a receiver acting under the previous provisions of law.

V.

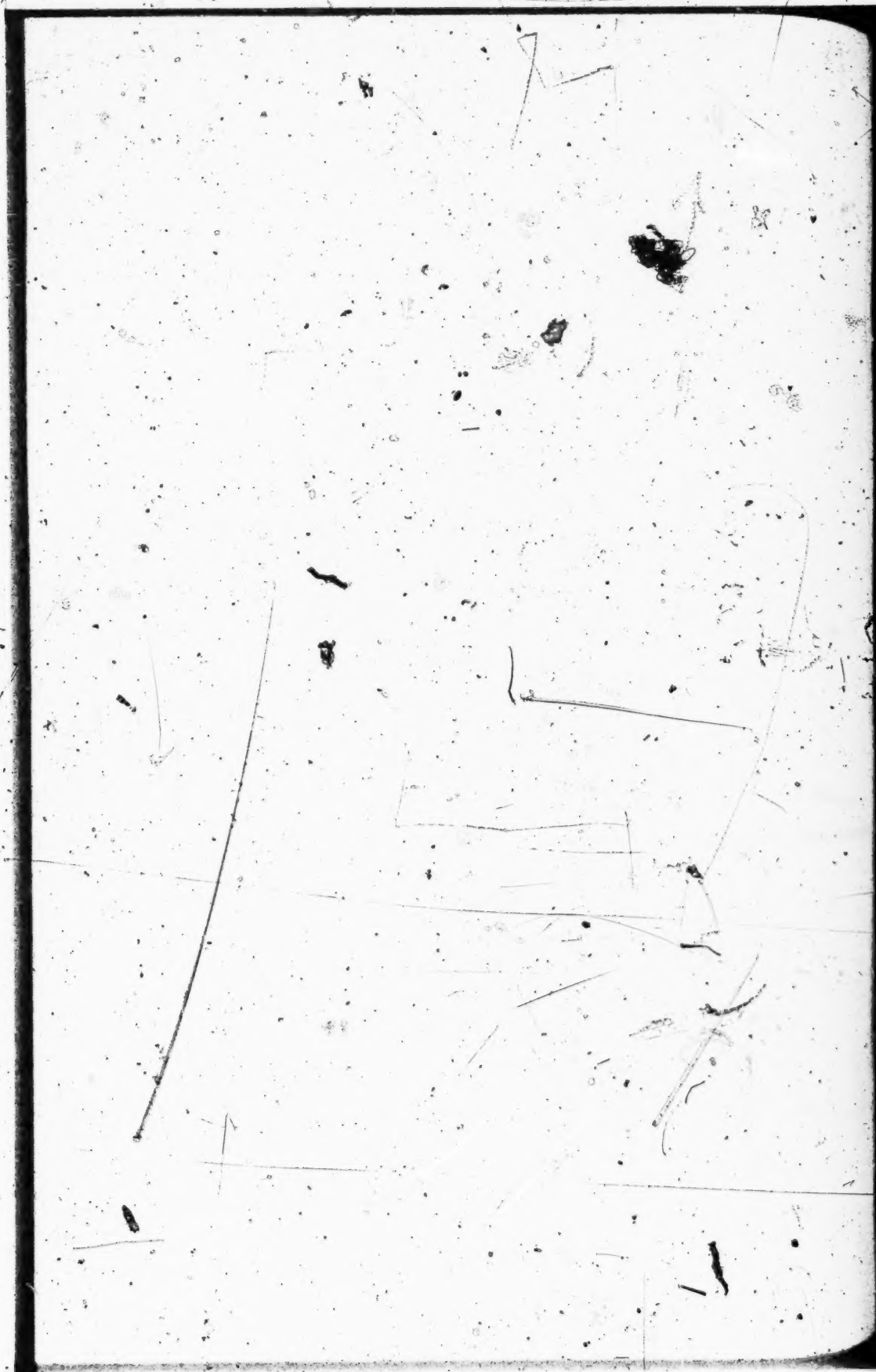
Because the appellant has failed to present the statement disclosing the basis upon which it is contended that this Court has jurisdiction upon appeal to review the judgment in question, as required by paragraph 1 of rule 12 of the rules of this Court, or to serve upon the appellee, as required by paragraph 2 of the said rule, such statement and the further statement direct-

ing attention to the provisions of paragraph 3 of said rule as required, though much more than the time for such service has elapsed.

And on the grounds above set forth the appellees move and apply to the Court herein for an order dismissing the said appeal herein.

JOHN M. DANIEL,
Attorney General;
J. IVEY HUMPHREY,
Ass't Atty. General;
MELTON & BELSER,
Attorneys for Appellees.

Columbia, S. C., June 2, 1933.



INDEX.

Subject Index.

	Page
Motion to affirm	1

Table of Cases Cited.

Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923	4
Branchville Motor Company v. Adden, 158 S. C. 90, 155 S. E. 277	2, 8
Fischer v. Olshouln, 150 S. C. 395, 157 S. E. 130	2, 8
Graham, Receiver, v. Berry, 160 S. C. 277, 164 S. E. 755	2, 8
Love, Ex Parte, 158 S. E. 240, 155 S. E. 428	8
Miller v. Schoene, State Entomologist, 276 U. S. 272, 72 L. Ed. 568	5
New York & N. E. R. R. Co. v. Bristol, 151 U. S. 566, 38 L. Ed. 269, 14 Sup. Ct. Rep. 437	4, 5
Noble State Bank v. Haskell, 219 U. S. 104, 55 L. Ed. 112	3, 8
Pittman, In re, 31 Nev. 48, 22 L. R. A. (N. S.) 260	3
Shallenberger v. First State Bank, 219 U. S. 114, 55 L. Ed. 117	3
Witt, Receiver, v. Peoples State Bank, 160 S. C. 1	2, 3

Statutes and Authorities Cited.

Act of the General Assembly of the State of South Carolina, approved March 9, 1933	2
Act to provide for the liquidation of banks of banking institutions after a conservator has been appointed, approved by the Governor of the State of South Carolina May 16, 1933:	
Section 1	5
Section 2	6
Section 3	7
Section 4	7
Section 4 (a)	7
Section 5	7
Section 6	7
Constitution of the State of South Carolina of 1895, Article 9, Section 2	9
Corpus Juris, Volume 7, pages 480-481	2
Ruling Case Law, Volume 3, pages 379-380	2, 8

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vs.

SIMPSON J. ZIMMERMAN, INDIVIDUALLY AND AS CONSERVATOR OF THE CENTRAL UNION BANK OF SOUTH CAROLINA, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

MOTION TO AFFIRM.

To the Honorable Supreme Court of the United States:

The appellees above named, as alternative and in addition to and without waiving their motion to dis-

1n

miss the appeal heretofore filed herein, respectfully move this Honorable Court to affirm the judgment of the Supreme Court of the State of South Carolina from which the appeal is taken, on the following grounds:

I.

Because by virtue of the great emergency then existing, as disclosed by the Act of the General Assembly of the State of South Carolina, approved March 9, 1933, and as found by the Supreme Court of the State of South Carolina in the decision from which the appeal is sought, the said act vesting the Governor of the State with plenary powers to supervise and control the Banking Department and banks of said State in accordance with the provisions of said Act was a reasonable and proper exercise of the police powers of the said State and for the public good.

"It is well established that the banking business is affected with a public interest so as to be subject to legislative regulation and control as a part of the police power of the State."

3 *R. C. L.* 379;
7 *C. J.* 480-481;
Branchville Motor Company v. *Adden*, 158 S. C. 90, 155 S. E. 277;
Fischer v. *Chisholm*, 159 S. C. 395, 157 S. E. 139;
Witt, Receiver, v. *Peoples State Bank*, 166 S. C. 1;
Graham, Receiver, v. *Berry*, 166 S. C. 277, 164 S. E. 277;

Noble State Bank v. *Haskell*, 219 U. S. 104, 55 L. Ed. 112;
Shallenberger v. *First State Bank*, 219 U. S. 114, 55 L. Ed. 117.

> "The police power of a state extends to the regulation of the banking business, and even to its prohibition except on such conditions as the state may prescribe."
>
> *Noble State Bank* v. *Haskell*, *supra* (syllabus).

In *Witt, Receiver*, v. *Peoples State Bank*, *supra*, the Court says:

> "The regulation of banks and legislation as to insolvent banks are special matters peculiarly within the province of legislative action."

The opinion of the Supreme Court of South Carolina in this case quotes from *Re Pittman*, 31 Nev. 43, 22 L. R. A. (N. S.) 266, in part as follows:

> "To regulate the banking business so as to reduce to a minimum failures in this branch of business enterprise is not only clearly within the powers of the legislative department of government, but it may also be said to be an imperative duty for the legislature to enact laws for the prevention, as far as possible, of bank failures."

Mr. Justice Holmes, in delivering the opinion in the case of *Noble State Bank* v. *Haskell*, *supra* (with regard to legislation on banking), said:

> "It may be said in a general way that the police power extends to all the great public